

IN THE UNITED STATES DISTRICT COURT
for the
Southern District of Texas
Houston Division

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 4:12-CR-00503
)
v.)
)
JASON DANIEL GANDY,)
)
Defendant.)

**DEFENDANT'S MOTION FOR PRODUCTION OF JENCKS ACT MATERIAL WITH
LEGAL AUTHORITIES IN SUPPORT THEREOF**

TO THE HONORABLE LEE ROSENTHAL, CHIEF DISTRICT JUDGE FOR THE
SOUTHERN DISTRICT OF TEXAS:

The Defendant, JASON DANIEL GANDY, in the above-styled and numbered cause, by and through the undersigned counsel, and files this Motion for Production of Jencks Material with Legal Authorities in Support Thereof and moves this Court for an order requiring production of Jencks material on or before December 6, 2013, and in support thereof would show the Court as follows:

1. Defendant moves for production of all statements and reports in the possession of the United States which were made by government witnesses or prospective government witnesses and which related to the subject matter about which those witnesses may testify, as per the Jencks Act, Title 18, U.S.C. § 3500 and Rule 26.2, F.R. Crim. Proc.
2. The term "statements" shall include:

a. Any written statement made by said witness and signed or otherwise adopted and approved by him;

b. Stenographic, mechanical, electrical or other recording or transcriptions thereof, which are a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; and,

c. A statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

3. Defendant seeks production of said statements sufficiently prior to trial for the purposes of judicial economy, to expedite discovery and the trial of this cause, and to avoid potential problems on the issue of whether all material has been tendered

pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. Although a District Court may not ordinarily compel disclosure of Jencks material prior to the conclusion of a witness' direct examination, the Fifth Circuit encourages early disclosure of Jencks material to obviate trial interruptions and permit defense counsel to study the disclosures. See *United States v. Campagnuolo*, 592 F.2d 852, 858 n. 3 (5th Cir. 1979).

4. The Jencks Act, 18 U.S.C. § 3500, which provides that no statement made by a government witness shall be discoverable until after the witness testifies, would appear to preclude any pretrial disclosure of Brady material. Brady, however, may "override" the Jencks Act in highly prejudicial circumstances. See *United States v. Stausko*, 719 F.2d 256, 263 (3d Cir. 1984) ("...compliance with the statutory requirements of Jencks Act does not necessarily satisfy the due process concerns of Brady," citing *Compagnuolo*, 592 F.2d at 858-60). The rule enunciated in Brady is a constitutionally compelled rule, and Justice Stevens' advice is worth heeding: "Because we are dealing with an inevitably imprecise standard and because the significance of an item of

evidence can seldom be predicated accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure." United States v. Agurs, 427 U.S. 97 (1976).

WHEREFORE, PREMISES CONSIDERED, Defendant prays this Honorable Court grant this Motion for Production of Jencks Act Material on or before January 22, 2018.

Respectfully submitted,

GRECO ♦ NEYLAND, PC

/s/ Dustan Neyland
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CERTIFICATE OF CONFERENCE

On January 3, 2018, counsel for Defendant conferred with AUSA Sherri Zack concerning her position regarding the above motion, and she has advised me that he will respond and state her position with respect to this motion by filing responsive pleading.

/s/ Dustan Neyland
DUSTAN NEYLAND

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to AUSA Sherri Zack .

/s/ Dustan Neyland
DUSTAN NEYLAND